

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

KRISTIN MARIE SMITH,
AND LLOYD SMITH,

Plaintiffs,

Cause No. 2:16-CV-24

v.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC.

Defendants.

**TOYOTA DEFENDANTS' OBJECTIONS TO PLAINTIFFS'
DEPOSITION DESIGNATIONS AND TOYOTA
DEFENDANTS' COUNTER-DESIGNATIONS**

TO THE HONORABLE COURT:

COME NOW, Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (collectively “Toyota”) and file their Objections to Plaintiffs' Deposition Designations and their Counter-Designations, and would show as follows:

First, Plaintiffs’ deposition designations included two depositions from previous, unrelated cases from the instant lawsuit—Christopher Tinto’s deposition from a case called *Hunsberger v. Toyota Motor Corporation*, taken in March 2005, and Don Cecconi’s deposition from *McCathern v. Toyota Motor Corporation*, taken in March 1997.¹ Plaintiffs should not be allowed to designate such testimony from these previous, unrelated cases. Plaintiffs never disclosed the transcripts of these depositions to the Toyota Defendants in this case.² At most, purported rough copies of these

¹ See *Pls. Deposition Designations* (Doc. 88)

² Plaintiffs’ Initial Disclosures broadly and vaguely noted that 15 past or present employees of various Toyota entities “have been deposed in 4Runner litigation” and that “Defendants have knowledge of this testimony.” See *Pls. Initial Disclosures* at 1-2, attached as **Exhibit 1**. However, the specific case names were not revealed, and

deposition transcripts along with numerous others (in .txt and other editable, informal file types) were contained within the electronic file materials of Plaintiffs' expert Mark Arndt, produced for the first time at his deposition on December 13, 2017. Using those rough purported copies, the Toyota Defendants have made more specific objections to the designated testimony below. However, the entirety of the designated deposition testimony of Christopher Tinto and Don Cecconi should be excluded under the applicable evidentiary rules.

Plaintiffs have not provided, and presumably do not have, true official copies of the cited deposition transcripts—complete with signature pages, court reporter certifications, returned errata sheets if any, etc. Accordingly, Plaintiffs are unable to satisfy the foundational requirement of bringing forth sufficient evidence that these deposition transcripts are what they purport to be. *See* Fed. R. Evid. 901.

Moreover, the statements within these deposition transcripts constitute inadmissible hearsay for which no exception applies. *See* Fed. R. Evid. 801, 802. The Rule 804 hearsay exception applicable to former testimony requires the proponent to show both that the declarant is unavailable and that (1) the testimony was given at a trial, hearing, or deposition; and (2) the testimony is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination. *See* Fed. R. Evid. 804(a), (b)(1). These two depositions of Mr. Tinto and Mr. Cecconi, taken in separate cases twenty and thirteen years ago, certainly do not meet this standard. The relevant Toyota entities involved in those previous cases would not have had the same motivation to seek testimony from their own witnesses that could have been presented instead at trial. These were, in effect, discovery depositions at which the respective plaintiffs' counsel were seeking discovery

Plaintiffs did not produce to the Toyota Defendants any copies of the formal transcripts of such depositions if Plaintiffs have any in their possession.

information from the Toyota witnesses. There would have been no reason for the Toyota entities in those cases to conduct what would have amounted to a full-scale trial direct or re-direct examination of their own witnesses in the deposition context. The Toyota Defendants in this case would thus be unfairly prejudiced if the unequally examined deposition testimony of previous Toyota entity employees from over a decade or two ago were to be admitted in this case.

Further to the more global objections to the Tinto and Cecconi deposition designations above, the Toyota Defendants also object to Plaintiffs' deposition designations as follows:

Christopher Tinto
(Objections)

Plaintiffs' OFFERS (Pg:Line – Pg:Line)	Defendants OBJECT (Pg:Line – Pg: Line)
54:2 – 54:14	401,402,403; injects other incidents, assumes facts not in evidence
71:18 – 72:13	401, 402, 403, 602, 701; calls for speculation, vague, lacks foundation
75:16 – 76:9	401, 402, 403, 602; calls for speculation, vague, lacks foundation
77:10-15	401, 402, 403; vague, assumes facts not in evidence
83:8-10	401, 402, 403; witness's lack of knowledge not relevant
90:10-15	401, 402, 403; 801, 802; 1002
90:16 – 91:19	401, 402, 403; 602; 701; 1002; lacks foundation
96:5-14	403, 602, 701, 801, 802, 1002, lacks foundation
122:7 – 124:4	403, 602, 901, 1002, lacks foundation
138:21 – 139:11	403, 901, assumes facts not in evidence
140:22 – 141:13	401, 402, 403
141:20 – 142:18	801, 802, 901, 1002, assumes facts not in evidence
143:3-6	801, 802, 901, 1002, assumes facts not in evidence
152:7 – 153:12	403, 602, 901, 1002, lacks foundation

Christopher Tinto
(Counter Designations)

Pg:Line – Pg:Line
11:11 – 12:3
74:10 – 74:18

Don Cecconi
(Objections)

Globally, the Toyota Defendants object to all of Plaintiffs' designated Don Cecconi testimony as irrelevant and/or more confusing, prejudicial, time-wasting than any limited relevance as marketing/advertising issues are now irrelevant in light of the Court's Memorandum and Order of April 3, 2018 (Doc. 103). *See* Fed. R. Evid. 401, 402, 403. The Toyota Defendants also specifically object as follows:

Plaintiffs' OFFERS (Pg:Line – Pg:Line)	Defendants OBJECT (Pg:Line – Pg: Line)
16:22 – 17:7	401, 402, 403, 602, calls for speculation, lacks foundation
20:25 – 21:15	401, 402, 403, 602, 701, calls for speculation, lacks foundation
22:14-18	401, 402, 403, 602, 701, calls for speculation, lacks foundation
30:1 – 31:1	401, 402, 403, misstates prior testimony, improper impeachment
73:15 – 74:15	401, 402, 403, 1002, calls for speculation, lacks foundation
77:12-17	401, 402, 403, 1002, calls for speculation, lacks foundation
77:20 – 79:1	401, 402, 403, 602, 701, 1002, calls for speculation, lacks foundation
79:7-13	401, 402, 403, injects other incidents
80:4-13	401, 402, 403, 1002
80:14 – 82:5	401, 402, 403, 602, 701, calls for speculation, lacks foundation
83:3-23	401, 402, 403, 602, 701, calls for speculation, lacks foundation
84:1 – 85:1	401, 402, 403, 602, 701, 1002, calls for speculation, lacks foundation
100:21 – 101:7	401, 402, 403, 701, calls for speculation
105:6 – 106:2	401, 402, 403, 602, 701, 1002
108:8 – 109:1	401, 402, 403, calls for speculation
112:22 – 113:24	401, 402, 403, 602, 701, calls for speculation, lacks foundation
122:3 – 123:2	401, 402, 403, 602, 701, 901, 1002, calls for speculation
123:7 -- 125:9	401, 402, 403, 602, 701, 901, 1002, calls for speculation, assumes facts not in evidence, argumentative
141:9 – 142:2	401, 402, 403, 602, calls for speculation

Kozo Oyama
(Objections)

Plaintiffs' OFFERS (Pg:Line – Pg:Line)	Defendants OBJECT (Pg:Line – Pg: Line)
11:18-12:18	relevance, 402, 403. Injects other incidents
18:1-21:2	relevance 402, 403. DPA not relevant and unduly prejudicial
62:21-65:7	relevance 402, 403. Other vehicles not relevant
68:22-71:2	relevance 402, 403. Other vehicles not relevant

Motoki Shibata
(Objections)

Plaintiffs' OFFERS (Pg:Line – Pg:Line)	Defendants OBJECT (Pg:Line – Pg: Line)
19:13-23	relevance, 402, 403 and injects other incidents
20:4-8	relevance, 402, 403 and injects other incidents
20:19-22	relevance, 402, 403 and injects other incidents
21:17-22	relevance, 402, 403 and injects other incidents
23:20-24:24	relevance, 402, 403. Testimony re seatbelts is irrelevant
27:23-28:6	relevance, 402, 403. Testimony re seatbelts is irrelevant
29:19-30:1	relevance, 402, 403. Testimony re seatbelts is irrelevant
30:5-30:18	relevance, 402, 403. Testimony re seatbelts is irrelevant
32:9-13	relevance, 402, 403. Testimony re seatbelts is irrelevant
33:7-22	relevance, 402, 403. Testimony re seatbelts is irrelevant
33:25-34:12	relevance, 402, 403. Testimony re seatbelts is irrelevant
35:9-15	relevance, 402, 403. Testimony re seatbelts is irrelevant
36:10-41:6	relevance, 402, 403. Testimony re seatbelts is irrelevant
41:20-42:5	relevance, 402, 403. Testimony re seatbelts is irrelevant
42:13-43:3	relevance, 402, 403. Testimony re seatbelts is irrelevant
43:13-44:24	relevance, 402, 403. Testimony re seatbelts is irrelevant
46:7-46:25	relevance, 402, 403. Testimony re seatbelts is irrelevant
47:3-47:17	relevance, 402, 403. Testimony re seatbelts is irrelevant
47:25-48:7	relevance, 402, 403. Testimony re seatbelts is irrelevant
48:18-49:25	relevance, 402, 403. Testimony re seatbelts is irrelevant
50:4-15	relevance, 402, 403. Testimony re seatbelts is irrelevant
50:22-51:4	relevance, 402, 403. Testimony re seatbelts is irrelevant
53/12-21	relevance, 402, 403. Testimony re seatbelts is irrelevant
54/4-20	relevance, 402, 403. Testimony re seatbelts is irrelevant
55/6-14	relevance, 402, 403. Testimony re seatbelts is irrelevant
56/1-24	relevance, 402, 403. Testimony re seatbelts is irrelevant

Plaintiffs' OFFERS (Pg:Line – Pg:Line)	Defendants OBJECT (Pg:Line – Pg: Line)
56/25-58/8	relevance, 402, 403 and injects other incidents
59/14-61/25	relevance, 402, 403. Testimony re seatbelts is irrelevant
62/1-5	to relevance, 402, 403. Testimony re seatbelts is irrelevant and misstates facts
62/14-16	to relevance, 402, 403. Testimony re seatbelts is irrelevant, misstates facts
62/25-65/9	relevance, 402, 403. Testimony re seatbelts is irrelevant
65/16-66/12	relevance, 402, 403. Testimony re seatbelts is irrelevant
67/4-68/10	relevance, 402, 403. Testimony re seatbelts is irrelevant
70/21-71/12	relevance, 402, 403. Testimony re seatbelts is irrelevant
72/11-16	relevance, 402, 403. Testimony re seatbelts is irrelevant

Respectfully submitted,

/s/ DAVID P. STONE

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CERTIFICATE OF SERVICE

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